

Remarks

At the mailing of the Office Action, claims 1-37 were pending with each of the claims being rejected by the Office. In this response, the applicant cancels claims 9, 22, 24-25 and 28-36 without prejudice. The applicant amends the remaining claims or re-submits the claims for further consideration in view of the following remarks.

In paragraph 2 of the Official Action, the Office has rejected claims 1-37 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 5,959,945 issued to *Kleiman* in view of U.S. Patent Number 5,959,945 issued to *Looney*. The applicant has amended independent claims 1 and 2 to further clarify the claimed invention and to more clearly delineate them from the cited art.

In general, the present invention provides a system and method for downloading music content to customers in such a manner as to limit the promulgation of illegal copies of the music and to appropriately bill for downloaded music. More specifically, claims 1 and 2 recite a system that includes a storage medium that allows for temporarily storing one or more music content items that have been received through a blanket broadcast. The customer can then select one or more of the music content items for permanent recording. Thus, the recited claim language includes a two phase process (1) downloading music content items for temporary storage and (2) permanently recording the music content items. As disclosed in the specification and recited in claim 2, the user can preview the music during the first phase to determine whether or not they desire to purchase the music. In phase 2, a permanent copy can be recorded. The recording of this permanent copy invokes the billing process. *Kleiman* describes a juke box scenario in which music can be down loaded into the juke box and be purchased. However, *Kleiman* does not describe the two phase operation of the present invention, nor would it have been obvious to

include such a two phase system in *Kleiman* since there is no preview being performed of the content.

Claims 1 and 2 also recite a billing system or process that is based on permanently recording music content items. Claim 1 specifically recites a communication link to a central control system over which information regarding permanent recording of music content items is communicated. Thus, the claimed system and method bill the customer only when music content items have been recorded and thus, this is accomplished in a retroactive or a posterior manner. *Kleiman* teaches the use of credits or depositing money into the jukebox as the means for paying for access to music selections. Thus payment in *Kleiman* is on an *a priore* basis, not *a posterior*.

Thus, the applicant submits that the rejections set forth in paragraph 2 of the Official Action have been fully replied to and that the claims are allowable in the present form. The applicant respectfully requests the Office to move these claims towards allowance.

The remaining claims, claims 3-8, 10-21, 23, and 26-27 either depend directly or indirectly from claims 1 or 2 and thus, are also in condition for allowance.

Extension of Time

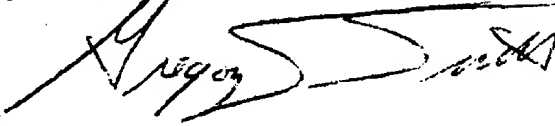
Pursuant to 37 C.F.R. § 1.136, Applicant hereby petitions for an extension of time of (3) three months, extending the time for responding to Official Action to August 12, 2004.

The statutory fee for small entities of \$475.00 is included in the attached credit card authorization form.

Conclusion

Applicant respectfully submits that claims 1-8, 10-21, 23, 26-27 are in condition for allowance. If the Office has any questions regarding these claims or this response, the Office can call the applicant's attorney, Gregory Smith at (770) 804-9070.

Respectfully submitted,



By:

Gregory Scott Smith
Reg. No. 40,819
Attorney for Applicant

LAVA Group Law by Smith & Frohwein
Gregory Scott Smith
PO Box 88148
Atlanta, Georgia 30356
(770) 804-9070
August 12, 2004